

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAYLA ALLEN, DAMON)
JOHNSON, TREASURE SMITH,)
and THE PANTHER PARTY,)
Plaintiffs,)

VS.)

CIVIL ACTION NO.:
4:18-CV-3985

WALLER COUNTY TEXAS; THE)
WALLER COUNTY)
COMMISSIONERS COURT;)
JUDGE CARBETT "TREY" J.)
DUHON III, in his)
official capacity as the)
Waller County Judge; and)
CHRISTY A. EASON, in her)
official capacity as the)
Waller County Elections)
Administrator,)
Defendants.)

ORAL DEPOSITION OF
PENIEL JOSEPH, PH.D.

VOLUME 1

DECEMBER 16, 2019

1 ORAL DEPOSITION OF PENIEL JOSEPH, PH.D.,
2 produced as a witness at the instance of the Defendants
3 and duly sworn, was taken in the above-styled and
4 numbered cause on DECEMBER 16, 2019, from 11:03 a.m. to
5 1:30 p.m., before JAMIE COOLEY, Certified Shorthand
6 Reporter in and for the State of Texas, reported by
7 machine shorthand, at the law offices of Norton Rose
8 Fulbright US, LLP, 98 San Jacinto Boulevard, Suite 1100,
9 Austin, Texas 78701, pursuant to the Federal Rules of
10 Civil Procedure and the provisions stated on the record
11 or attached hereto.

APPEARANCES

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS, WALLER COUNTY TEXAS; THE WALLER
COUNTY COMMISSIONERS COURT; JUDGE CARBETT "TREY" J.
DUHON III, in his official capacity as the Waller County
Judge; and CHRISTY A. EASON, in her official capacity as
the Waller County Elections Administrator:

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ALSO PRESENT:

Ms. Elizabeth Dorsey, Waller County District
Attorney's Office
Mr. Steven Lance

STIPULATIONS

The attorneys for all parties present stipulate and agree to the following items:

The deposition of PENIEL JOSEPH, PH.D. is taken pursuant to Notice;

That all objections will be made pursuant to the Federal Rules of Civil Procedure;

That pursuant to FRCP Rule 30(e)(f), the signature of the deponent was requested by the deponent or a party before the completion of the deposition. The original transcript will be submitted electronically for signature to the witness' attorney, MR. JOHN S. CUSICK, and that the witness or the witness' attorney will return the signed jurat and errata pages to Cooley Reporting within 30 days of the date the transcript is provided to the witness' attorney. If not returned, the witness may be deemed to have waived the right to make the changes, and an unsigned copy may be used as though signed.

Jayla Allen, et al. vs. Waller County, Texas, et al.
 Peniel Joseph Ph.D. - 12/16/2019

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EXHIBITS

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(Federal Rule 30(b)(5)(A)(B)(C) waived.)

PENIEL JOSEPH, PH.D.,

having been first duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. HEATH:

Q. What's your name, please?

A. Peniel E. Joseph.

Q. Okay. And where do you reside?

A. Austin, Texas.

Q. And what's your profession?

A. I'm a historian, and I'm a professor at the LBJ School of Public Affairs as well.

Q. Okay. Have you ever been deposed before?

A. No.

Q. Well, just a few things here. One of the things is that -- and your lawyer has probably already told you this, but listen to the question. Let me finish before you answer. I will do my best to let you finish before I answer because the court reporter can just take down one of us at a time.

And is there any reason that you can't be deposed today? You're not under any sort of drugs or had a head injury or anything like that that would keep you from testifying?

A. No.

1 Q. Okay. And if you don't understand my question,
2 would you ask me to clarify it?

3 A. Yes.

4 Q. Okay. So I can assume as you answer that you
5 have understood the question and are answering it
6 correctly?

7 A. Yes.

8 Q. Okay. Did you prepare --

9 MR. CUSICK: Just one second, Mr. Heath.
10 Could we just have two stipulations, that Dr. Joseph
11 will read and sign afterwards, and that we've normally
12 been doing all object- -- objections except for form are
13 preserved --

14 MR. HEATH: Sure.

15 MR. CUSICK: -- as consistent with
16 30(b)(5)? Is that okay?

17 MR. HEATH: Yes.

18 MR. CUSICK: Great. Thank you.

19 Q. (BY MR. HEATH) And did you prepare a report
20 for this proceeding?

21 A. Yes.

22 Q. Okay. And I've just handed you what I'm going
23 to ask the court reporter to mark as Exhibit No. 1. And
24 ask if you have -- if this is the report you prepared?

25 (EXHIBIT NO. 1 MARKED)

1 MR. HEATH: Do you need one?

2 MR. CUSICK: If you have an extra...

3 MR. HEATH: Sure.

4 Do you want one?

5 MS. DORSEY: Sure.

6 Q. (BY MR. HEATH) The first question I'm going to
7 ask you involves page 11. You indicate that in 2012
8 Texas failed to gain approval of the state house and
9 congressional plans under Section 5 and thus had to
10 implement remedial plans. Do you recognize that?

11 A. Let me take a look. In -- yeah. You're
12 speaking about the last full paragraph there?

13 Q. I think that's probably correct.

14 A. Yes.

15 Q. Okay. And just so the record is straight, is
16 it correct to say that the decision to use remedial
17 plans was not because the Section 5 court had rejected
18 the plans but because the District of Columbia court had
19 never ruled on them at that time?

20 MR. CUSICK: This is the paragraph.

21 THE WITNESS: Oh, this is the paragraph?

22 MR. CUSICK: Yes.

23 Objection to form.

24 THE WITNESS: Let me take a look. And can
25 you -- can you restate -- repeat your question, please?

1 Q. (BY MR. HEATH) Is the reason that remedial
2 plans were adopted for the 2012 election not because
3 they had been rejected under Section 5 but rather was
4 because the district court in the District of Columbia
5 had not yet completed its trial and ruling on it, or do
6 you know?

7 A. Yeah. I'm not -- I'm not sure.

8 Q. Okay. You mentioned -- and I think it is on
9 the same page -- that the district court with guidance
10 from the Supreme Court adopted remedial plans. Do you
11 know what the Supreme Court's guidance was?

12 A. Well, you're speaking about the -- the Supreme
13 Court's affirmation of the federal three-judge court's
14 decision that the Texas Leg. intentionally discriminated
15 by racially gerrymandering a Latino majority State House
16 district in Fort Worth?

17 Q. No. I'm talking about what happened in -- I
18 think it was late 2011, perhaps early 2012 before there
19 was ever a Section 5 ruling or a final Section 2
20 ruling -- the Section 5 ruling, of course, would be by
21 the D.C. three-judge court. Section 2 by the Texas
22 three-judge court.

23 A. And your question is?

24 Q. Do you know what guidance the Supreme Court --
25 you said -- and -- in the first full paragraph --

1 A. Yeah.

2 Q. -- you say, (as read) "With guidance from the
3 U.S. Supreme Court in Perry v. Perez" that -- "to
4 implement remedial plans based on the three-judge
5 federal courts' preliminary findings" --

6 A. Oh. I see what you're saying. Okay.

7 Q. So --

8 A. I'm not -- right now, I'm not exactly sure what
9 that guidance was.

10 Q. Okay.

11 A. Yeah.

12 Q. So as far as you know, the guidance may have
13 been that the three-judge court went too far in revising
14 the legislatively adopted plans? Is that a possibility?

15 A. I'm -- I'm just not sure. So I -- yeah.

16 Q. Okay.

17 A. Yeah.

18 Q. While the D.C. district court subsequently said
19 that parts of the 2011 plan were invalid, wasn't that
20 decision vacated by the Supreme Court and never became
21 final?

22 A. I'm not sure in that specific instance.

23 Q. Okay. Now, also on page 11, you say, "On
24 June 25, 2018" -- and this is in the last full paragraph
25 down near the bottom -- "the U.S. Supreme Court affirmed

1 a federal three-judge court's decision that the Texas
2 Legislature intentionally discriminated by racially
3 gerrymandering a Latino majority State House district in
4 Fort Worth." Do you see that?

5 A. Yes.

6 Q. Although you say that the Supreme Court
7 affirmed the lower court decision at least for that one
8 district, isn't it correct to say that the Supreme Court
9 reversed the lower court's decision insofar as it found
10 a Voting Rights violation, or do you know?

11 A. Yeah. Unless I -- do you have -- are you going
12 to read something?

13 Q. As a matter of fact, I do.

14 A. Okay. Thank you.

15 MS. ADEN: When you say "Voting Rights,"
16 do you mean Voting Rights Act or --

17 MR. HEATH: Yes. Voting Rights Act.

18 Q. (BY MR. HEATH) And you might look to satisfy
19 yourself, this is the Supreme Court decision that you
20 were talking about.

21 A. Okay.

22 Q. And on page 22, which is the page that I --

23 A. Yes.

24 Q. -- opened it to -- let's see. Near the end --
25 at the end of the first column, did it say that the

1 lower court erred in enjoining the State plan except for
2 that Fort Worth district?

3 A. Yes. That's what it says. Uh-huh.

4 Q. Okay. So then is it fair to say that the
5 Supreme Court did not affirm the lower court's decision
6 of a finding of a violation of the Voting Rights Act and
7 that the only thing that stood involved the one district
8 in Fort Worth?

9 A. Well, I think, based on reading this, they're
10 saying, "Except with respect to one Texas House
11 district," which is the -- Fort Worth. So I -- I think
12 this -- that statement -- that sentence still reads
13 true.

14 Q. Okay. But can we agree that the Supreme Court
15 determined that the lower court had gone too far, and
16 they reversed it, any injunction of the State plan,
17 except in regard to the one Fort Worth district? That's
18 the only thing they were concerned about.

19 A. Yes.

20 Q. All right. In regard to the Fort Worth
21 district, wasn't that -- wasn't the finding of the
22 Supreme Court that the State went too far in trying to
23 ensure that the district did comply with the Voting
24 Rights Act?

25 A. I'm not sure because I'd have to read this

1 again, because I know there's a --

2 Q. Well, is that something that would -- oh, I'm
3 sorry. You're reading further. If you're going to read
4 further in that, I would suggest you look at page 21,
5 the preceding page. And in particular, if you see
6 headnote 30, which is the top of the second column on
7 that page, the second paragraph.

8 If this might speed things up, doesn't the
9 Supreme Court decision indicate that the legislature
10 responded to the request of the predominantly
11 African-American citizens of the Como district to put
12 Como, the predominantly black area, back into
13 District 90 --

14 A. Uh-huh.

15 Q. -- and then responded to the request of MALC,
16 the Mexican-American Legislative Conference, I think it
17 is, to add Hispanic votes because this was a
18 predominantly Hispanic district? So that it was adding
19 minority voters at the request of both the
20 African-American community and the Hispanic community.
21 Is that what it says?

22 A. Yes; that's what it says.

23 Q. Okay. Are you familiar with the Shaw vs. Reno
24 line of cases?

25 A. No.

1 Q. Okay. Do you know if there is a line of
2 cases -- and just not to hide the ball, it's what I
3 refer to as the Shaw vs. Reno line --

4 A. Yeah.

5 Q. -- that talks about racial gerrymandering or
6 using race to a predominant factor in redistricting,
7 which in some respects is the opposite of what is re- --
8 governments are required to do under the Voting Rights
9 Act? Are you -- have you ever heard of those cases?

10 MR. CUSICK: Just objection: Outside the
11 scope of a legal opinion.

12 But go ahead.

13 Q. (BY MR. HEATH) Go ahead.

14 A. I probably have read about them --

15 Q. Okay.

16 A. -- a little bit vis-a-via Ari Burman and some
17 other histories of the Voting Rights Act.

18 Q. Okay. On page 12 of your report, you say that
19 "Waller County is the most difficult county in Texas for
20 African American college students to vote." Did you do
21 some study of the other counties?

22 A. No, I didn't do a study of the other counties.
23 That was based on the -- the pattern of historic
24 discrimination against the PVAMU students --

25 Q. Okay.

1 A. -- that Waller County has exhibited since the
2 passage of the VRA.

3 Q. But you didn't look at any other counties?

4 A. No, but, I mean, when it comes to counties like
5 Travis County and -- and the University of Texas
6 students, students have a much easier time of voting on
7 campus if you're at a predominantly white institution
8 like the University of Texas at Austin. It's right at
9 the center. Students aren't having to protest. You can
10 vote at the Flawn Academic Center right at UT, right on
11 the 40 acres. Right? And no one would put a voting
12 site off campus at the University of Texas. Like, no
13 one would even consider it because it doesn't make any
14 sense. So there's a long history at PVAMU, which is,
15 you know, a historically black school that's been around
16 since the 1860s, of -- of just denying the vote to those
17 students even after the Voting Rights Act.

18 Q. Would it be fair to say then that based on the
19 study and experience you have, that, in your view, it is
20 harder -- more difficult for African-American college
21 students to vote in Waller County than in Travis County
22 but not necessarily in the other 252 counties in the
23 state?

24 A. Well, no. I would say that PVAMU is -- is
25 going to be the most difficult place to vote, because

1 even after -- if you think about it historically, after
2 the VRA, PVAMU students couldn't vote because Waller
3 County officials claimed that they weren't residents,
4 and it took -- it took another 14 years, until 1979, for
5 the Supreme Court to say, "No. They could vote," but
6 then even after that, in 1992 and after, Waller County
7 officials have -- have threatened to -- to prosecute
8 PVAMU students who are -- who are trying to vote or even
9 run for office.

10 Q. Is it fair --

11 A. So --

12 Q. I'm sorry.

13 A. So -- and even after that -- and we can discuss
14 this over the course of the morning and afternoon --
15 there's just been systemic efforts to disfranchise black
16 student- -- black students at PVAMU continuing up until
17 today.

18 Q. Is it fair then to say that your observation
19 that Prairie View -- or that Waller County is the most
20 difficult place in the state for African-American
21 college students to vote, based on your observation of
22 Prairie View in Waller County and your observation of
23 maybe some other counties like Travis County with which
24 you're generally familiar -- but that you didn't look at
25 all the other counties?

1 A. I didn't do a systemic investigation of all the
2 other counties, but Prairie View and Waller County is
3 the county in Texas that has made national news for
4 decades as a county that is authoritatively bent on
5 preventing African-Americans in Prairie View, especially
6 PVAMU students, from exercising the franchise and their
7 citizenship rights. So Waller County is infamous
8 nationally because of what Waller County officials have
9 consistently tried to deploy against PVAMU students. So
10 they've made a national reputation for themselves that's
11 infamous but that is well earned when you investigate
12 the history and the contemporaneous efforts at voter
13 suppression.

14 Q. Back to Travis County. You mentioned that
15 there is on-campus early voting for UT students at the
16 Flawn Academic Center. Is the student enrollment at the
17 University of Texas larger than the entire population of
18 Waller County?

19 A. Student enrollment at UT is going to be over
20 40,000. I mean, with grad students, it might even be
21 50-. So it could be larger.

22 Q. Okay.

23 A. It could be larger.

24 Q. And, in fact, if you look at the number of
25 people who are present on campus, when they add faculty

1 and staff and so forth, have you heard that there are
2 typically like 70,000 people on the campus?

3 A. Well, I mean, if there's a football game, yes,
4 there's going to be that many people on campus --

5 Q. Okay.

6 A. -- especially if the Longhorns are winning and
7 going to bowl games.

8 Q. Right.

9 A. So last year was one of those years.

10 Q. Okay. On page 17, you say, "By 1990, with the
11 aid of DOJ intervention, PVAMU students were represented
12 in one precinct." What sort of precinct are you talking
13 about? And specifically what I'm wondering is, is -- is
14 what you're saying --

15 A. Page 17?

16 Q. It's Page 17, I think --

17 A. Okay.

18 Q. -- I said. And specifically what I'm wondering
19 is, are you talking about a county commissioner --
20 perhaps county commissioner and justice precincts?

21 MR. HEATH: Are the commissioner and JP
22 precincts identical?

23 MS. DORSEY: Yes.

24 MR. HEATH: Okay. That's what I thought.

25 THE WITNESS: Yeah, I'm not sure here,

1 because it says, "In 1990" -- yeah. I'm not sure
2 exactly what -- what precincts.

3 Q. (BY MR. HEATH) Okay.

4 A. Is that a voting -- I'm not sure exactly.

5 Q. Okay. You say that this was "with the aid of
6 DOJ intervention." What was the DOJ intervention?

7 A. I think the DOJ intervention -- and I'm not
8 quite sure -- I think was based on trying to -- trying
9 to push back against redistricting efforts that spread
10 out PVAMU students across precincts that were going to
11 dilute their voting power.

12 Q. Do you know if any Department of Justice
13 personnel or any communication from the Department of
14 Justice to the County officials stated that prior to
15 the -- it would have been the 1991 redistricting?

16 A. You know, I'm not sure, but I would say
17 probably, because one thing about the DOJ -- and over
18 here in -- there's a 2002, on page 18, DOJ objection.
19 Certainly the -- the Waller County officials have been
20 in -- in correspondence with DOJ officials since the VRA
21 and throughout the 1970s and -- and '80s because of all
22 the challenges that were -- were happening and all the
23 litigation that was happening. And so many -- both
24 residents and PVAMU students were appealing to the DOJ
25 to help them with the voter suppression that was

1 happening in Waller County.

2 Q. Okay. So would it be fair to say that it's
3 your assumption that the DOJ intervened but you're not
4 really sure?

5 A. Well, no. I think this is based on the sources
6 that I was using. I just can't pinpoint them here,
7 because just on the next page, it says, "In 2002, the
8 DOJ objected to a redistricting plan proposed by Waller
9 County officials, citing census data and statistical
10 analyses to demonstrate how the plan seemed
11 purposefully" -- "purposefully designed to undermine the
12 effectiveness of racial minority voters. 'Within the
13 context'" -- this is a quote. "'Within the context of
14 electoral behavior in Waller County,' stated the
15 Department of Justice, 'the county has not established
16 that implementation of this plan will not result in a
17 retrogression in the ability of minority voters to
18 effectively exercise their electoral franchise,'" close
19 quote. And that's from Nina Perales and Luis Figueroa
20 and Criselda Rivas, "Voting Rights in Texas: 1982-2006."
21 So I would say that there -- there most likely was a DOJ
22 assist because there's a long history with the DOJ
23 trying to assist PVAMU students in -- in breaking down
24 voter suppression barriers that are erected by -- by
25 Waller County.

1 Q. All right. And what you just talked about was
2 something that happened in 2002, which is essentially
3 ten years after the redistricting that I was questioning
4 you about, the -- you refer to it by 1990, but, in fact,
5 redistricting happens after the decennial census, which
6 is a year later. So that would be '91; correct?

7 A. Yes.

8 Q. All right. And I think that's how people
9 typically refer to redistricting, by the decade, but it
10 actually happens the -- later after the census is
11 published.

12 But what happened in 2002 doesn't tell us
13 what happened in '90, does it?

14 A. Well, no. I would disagree with that. So when
15 you think about what happens with Waller County and --
16 and here are just some snapshots, and I can -- I can --
17 I'd like to read off -- "In 1971, after the 26th
18 Amendment extended the vote to those 18 years and older,
19 Waller County, which is home to PVAMU, became troubled
20 with" -- "with race issues. Waller County's tax
21 assessor and voter registrar" -- "registrar prohibited
22 students from voting unless they or their families owned
23 property in the county. This practice was ended by a
24 three-judge court in 1979."

25 "In 1992, a county prosecutor indicted 19

1 PVAMU students for illegally voting but dropped the
2 charges after receiving a protest from the DOJ."

3 "In 2003, a PVAMU student ran for the
4 commissioners court. The local district court" --
5 excuse me, "the local district attorney and county
6 attorney threatened to prosecute students for voter
7 fraud for not meeting the old domicile test." And
8 that's the domicile test that had been ended in 1979
9 by -- by a three-judge court. So this is a pure
10 invention for voter suppression. "Those threatened
11 prosecutions were enjoined, but Waller County then
12 reduced early voting hours, which was particularly
13 harmful to students because the election day was during
14 their spring break. After the NAACP filed suit, Waller
15 County reversed the charges, the changes to early
16 voting, and the student narrowly won the election."

17 "In 2007-2008, during then Senator Barack
18 Obama's campaign for president, Waller County made
19 several voting changes without seeking preclearance.
20 The county rejected," quote/unquote, "'incomplete voter
21 registrations' and required volunteer deputy registrars,
22 VDRs, to personally find and notify the voters of the
23 rejection. The county also limited the number of new
24 registrations any VDR could submit, thus limiting the
25 success of voter registration drives. These practices

1 were eventually prohibited by a consent decree."

2 But then it continues. When -- when we go
3 to the -- "by 2008, Judge DeWayne Charleston, a black
4 Justice of the Peace and voting rights activist, led
5 efforts to prevent Waller County officials from reducing
6 early voting and polling stations. Charleston also
7 alleged that county officials refused to allow hundreds
8 of local residents, many of whom he personally
9 registered, to vote in the 2006 elections. By this
10 time, then Attorney General and now Governor Abbott, who
11 supported PVAMU students' rights to vote in 2004" -- "he
12 opposed PVAMU students' voting rights by 2006. He found
13 himself listed as a defendant."

14 When we think about 2008 -- "On
15 October 10, 2008, the Department of Justice announced a
16 consent decree with Waller County officials who agreed
17 to halt 'implementation of the unprecleared registration
18 practices reprocessed those applications which were
19 wrongly rejected and initiate voter registration
20 programs' at PVAMU. In accordance with the consent
21 decree, Waller County agreed to halt changes in voter
22 registration practices that they had begun to implement
23 without DOJ approval. Specific changes to the county's
24 volunteer deputy registration program, notice
25 requirements, and standards for accepting voter

1 registration applicants were now halted. As part of the
2 agreement, Waller County also agreed to reprocess
3 applications from black residents that had been
4 improperly rejected and implement voter registration
5 programs at PVAMU."

6 "Despite the consent decree in 2008, the
7 DOJ designated Waller County as one of the sites across
8 23 states to receive elector monitoring by the Civil
9 Rights Division, one of 55 elections that would be
10 closely watched by 415 federal" -- "federal observers."

11 And this continues. When we think --
12 "several PVAMU students and other individual
13 organizations intervened in a" -- "in a suit in 2012
14 that challenged Texas" -- "Texas's voter ID law. And by
15 2014, after a federal court found that the law had a
16 discriminatory impact on black and Hispanic voters in
17 Texas and was enacted for that purpose, subsequent
18 appellate court decisions upheld that the law had a
19 discriminatory impact on blacks" -- "black Texans." So
20 PVAMU students were at the forefront there.

21 "In 2016, a full panel of judges of the
22 Fifth Court" -- "Fifth Circuit Court of Appeals affirmed
23 that Texas" -- "Texas district court's rulings that the
24 Texas voter ID law was racially discriminatory. The en
25 banc federal appellate court observed that the

1 restricted voter ID bill was passed in the wake of a
2 seismic demographic shift as minority populations
3 rapidly increased in Texas such that the party currently
4 in power was facing a declining voter base and could
5 gain partisan advantage through a strict voter ID law."

6 "In 2016, that same year, PVAMU students
7 protested so their county officials would not remove the
8 on-campus polling site recently won."

9 "In 2018, in October, PVAMU students
10 alleged violations of the VRA and the U.S. Constitution
11 based on plans, once again, to restrict access to early
12 voting opportunities in Waller County. And at the time,
13 19-year-old PVAMU student, Sophomore Damon Johnson, a
14 plaintiff in this lawsuit, explained, 'I don't want this
15 to be the reason, but it looks like we're PVAMU in a
16 predominantly white area and they don't really want us
17 to vote.'"

18 So all those things -- what's interesting
19 about being a historian is that -- what you do as a
20 historian is you follow the evidence. So you're
21 interested in really, especially a day-to-day account,
22 if you can, of why are we in a specific historical
23 moment, and when you think about Waller County, when you
24 follow the evidence, there's been panoramic versions of
25 institutional racism and systemic discrimination against

1 PVAMU students who are trying to vote for decades, and
2 it doesn't -- it doesn't ever desist. And so what we
3 see is an evolution of different efforts to prevent
4 black students in Prairie View from voting, and it's --
5 decade after decade, you can get your greatest hits of
6 what's the most malicious and mendacious effort to
7 prevent black citizenship, but it's very, very
8 consistent throughout.

9 Q. All right.

10 A. I'd like to go to the restroom.

11 MS. ADEN: Do you mind?

12 MR. HEATH: Okay.

13 (RECESS FROM 11:37 a.m. - 11:41 a.m.)

14 Q. (BY MR. HEATH) Dr. Joseph, you gave me a very
15 long answer talking about various instances from, I
16 believe, 1971 to 2018, a total of 47 years, and from
17 that -- going back to my original question that I had
18 asked you there, is your answer that you conclude from
19 all of these various instances of over 47 years that the
20 Department of Justice intervened in 1990 to direct
21 Waller County in its redistricting of the commissioner
22 precincts?

23 A. I'm not sure if the Department of Justice
24 intervened. I think they did intervene based on just
25 reading this --

1 Q. Okay.

2 A. -- deadline, but I'm not --

3 Q. So in your report where you say -- talk about
4 the Department of Justice intervention, it might be --

5 A. Well, I mean --

6 Q. -- better --

7 A. -- I think -- I think there -- there is. I
8 just don't see the specific -- I don't have the specific
9 details, but I'd say yes, they did intervene because
10 it's -- it's right there. So there's -- there's --

11 Q. It's right there because you said it?

12 A. Well -- but I wouldn't say -- I wouldn't say
13 something that wasn't -- that wasn't in -- in the -- in
14 the sources, in -- in the archives.

15 Q. Okay. And --

16 A. It's just in that instance, unlike the 2002
17 instance, maybe for brevity, I don't take a full quote
18 from the DOJ corresponding or issuing a public statement
19 about what Waller County was doing vis-a-vis voter
20 suppression, but in 2002, I do quote -- so you can see
21 that's a quote that is drawn from the Perales and
22 Figueroa and Rivas law -- the article, "Voting Rights in
23 Texas: 1982-2006."

24 Q. Okay. On page 18, you talk about the county
25 officials continuing "to practice a policy of voter

1 intimidation against PVAMU students into the 21st
2 century," and note that a 2002 DOJ objection to the
3 redistricting plan found purposeful design to undermine
4 the effectiveness of racial minority voters. What sort
5 of research did you do about the details of that
6 objection?

7 A. I think I read -- I read the aspects of the DOJ
8 objection that were in the -- the voting rights in Texas
9 essay. I don't know if I read the full DOJ objection.
10 I might have, but it's not cited here.

11 Q. But is it your testimony that it reflected an
12 effort on the part of the county officials to
13 disenfranchise or otherwise diminish the electoral
14 effectiveness of Prairie View students?

15 A. Oh, yes. They have a -- they have a huge
16 history of this. I mean, they should be -- you should
17 either be very -- Waller County should be either very
18 proud or ashamed of this history because it's so, so
19 consistent in terms of trying to diminish and undermine
20 citizenship rights for African-Americans at PVAMU.

21 Q. If, in fact, the Department of Justice
22 objection was based -- or trying to get the county to
23 move African-American voters out of Precinct --
24 Commissioner Precinct 3, which is the one that contains
25 Prairie View, and into Precinct 1, the one that contains

1 Hempstead, to boost the African-American percentage in
2 that precinct rather than the Prairie View precinct,
3 would that be consistent with trying to disenfranchise
4 Prairie View students?

5 A. Yes. It could be if you're gerrymandering in a
6 way that's going to provide partisan -- both partisan
7 and racial advantage in terms of voting outcomes. Yes.

8 Q. What if the objection says -- if the result of
9 the objection was to end up splitting the town of
10 Prairie View so that part of that previously put
11 together in 1990 went up to Precinct 1 to take those
12 votes away from the Prairie View commissioner precinct,
13 those African-American votes, and put them into
14 Hempstead to boost the African-American percentages up
15 there, would that be something that was designed to
16 disenfranchise Prairie View students?

17 A. Well, it's going to be yes, if it disallows
18 Prairie View students from having political power in the
19 precinct that is representative of the voters of where
20 they actually live, because they're not -- they're not
21 in Hempstead. They're in Prairie View.

22 Q. But do you know if it did that?

23 A. No, I don't know if it did that.

24 Q. Okay. On page 20 and 21, you discuss the
25 efforts by District Attorney Kitzman to challenge the

1 residency of Prairie View students, and you mention that
2 Kitzman backed down in light of opposition from the
3 Texas Attorney General. Also, did the Texas Secretary
4 of State object to Kitzman's actions and try to resolve
5 those?

6 A. And your question? I didn't hear the question.

7 Q. Did the Secretary of State as well as the Texas
8 Attorney General essentially intervene on behalf of the
9 students?

10 A. In that case, yes, they do --

11 Q. Okay.

12 A. -- intervene on behalf of the students.

13 Q. Now, you mention that the efforts had the
14 opposite effect of what Mr. Kitzman apparently intended
15 since there were 2,000 new reg- -- voter registration
16 requests; is that correct?

17 A. Yes. It said it had -- it had the opposite
18 effect of -- of what Kitzman intended, but one thing
19 that's important to note and get on record is that these
20 students should not in 2004, let alone now, have been
21 fighting for voting rights in the United States of
22 America. So one of the things that I'd -- I'd like to
23 say that -- like right here, "DA Kitzman's efforts were
24 particularly chilling to PVAMU students' political
25 participation since they came on the heels of an

1 announcement by two PVAMU students that they intended to
2 run for a county office at a time where students made up
3 20 percent of the voting age population." So this is --
4 this is intimidation when you are an American citizen
5 and you are disallowed from -- from -- from voting.
6 It's huge intimidation. It's huge trauma. I mean, I --
7 I vote at the -- sometimes at the University of Texas
8 just on campus. I mean, I couldn't imagine people
9 saying that, one, I couldn't vote. I know I have the
10 right to vote, but this idea of indictments or -- and I
11 couldn't imagine actually, truthfully, right now in 2019
12 having to protest for my right to vote or really anybody
13 else's right to vote who are American citizens.
14 That's -- that's what's the huge -- the huge outrage
15 here.

16 Q. And is it correct that the result of this was
17 so chilling, the 2,000 went out and registered?

18 A. Well, people went out and registered because
19 they were trying to push back against that kind of --

20 Q. Okay.

21 A. -- chilling effect. Right? But -- but, you
22 know, part of -- part of what you see here is the very
23 fact that each new generation of PVAMU students are
24 forced to have to organize, are forced to have to file
25 legal suits, are forced to have to become voting rights

1 experts to defend their -- their own voting rights is
2 something that's hugely unfortunate, and it has a really
3 big impact. So even though in this instance, yes, you
4 get thousands of people who come out in protest, I think
5 overall the fact that citizens, PVAMU black residents,
6 and students have to be so vigilant to protect their own
7 voting rights is -- is something that's hugely
8 unfortunate, and it's burdensome. Because most of us --
9 I don't think anybody else in this room thinks of the
10 vote like that. I mean, we -- we -- we're -- I think
11 we're all active citizens. I would hope we are and that
12 we vote and we engage, but we don't have to protest for
13 our very right to vote.

14 Q. And when faced with what they perceived to be
15 efforts to prevent students from voting, have Prairie
16 View students redoubled their efforts to be sure they do
17 vote?

18 A. I think, yes, they -- they have year after
19 year. The -- the unfortunate -- the unfortunate reality
20 is that year after year Waller County officials try to
21 make it more difficult for Prairie View students to
22 vote. So it becomes this -- this shell game, and one of
23 the -- at some point in the report, I talk about
24 Sisyphus and -- you know, Sisyphus, the legend, the
25 Greeks, and, you know, Sisyphus is doomed to roll that

1 big boulder up the hill, and right when he gets to the
2 apex, it comes back down. It's a really horrifying, you
3 know -- you know, circumstance, and that's what our
4 students -- our PVAMU students, they're constantly
5 lifting that boulder -- they're lifting that right up to
6 the hill, and it keeps coming down back on their heads.
7 Right? So this is a hugely unfortunate situation. So
8 on one level, the students are heroic, but on another
9 level, they shouldn't be put in this situation where
10 across generations they have to become voting rights
11 experts. We're -- we're better than this as a county
12 and as a nation, and Waller County should be better than
13 this too.

14 Q. Okay. You talk about an effort by students
15 that year -- whatever the year the Kitzman thing was --

16 A. 2004.

17 Q. -- to increase voting hours at the early voting
18 site near campus. Where was that site?

19 A. That site was not on campus yet. I'm not sure
20 exactly where that site was.

21 Q. Okay. Do you think it might be the community
22 center?

23 A. Maybe, but I'm not sure.

24 Q. Okay.

25 A. That's not on campus yet.

1 Q. And you mentioned a protest regarding the
2 number of hours. Was there any protest or issue
3 regarding the location?

4 A. There's always been protests around the
5 location. And students going back -- and I don't --
6 some of this, I think, is cited early in the report --
7 were -- were -- students have wanted a polling site on
8 campus for decades. They received the polling site by
9 2016. By 2016 or is it 20- -- certainly by the 2016
10 election, there was a polling site on campus. It could
11 be even before that, but students have been talking
12 about wanting a polling site on campus for -- for
13 decades and certainly way before it was actually
14 provided by Waller County officials. And even -- one of
15 the things we see in the record too, school
16 administrators had been receptive to a polling site on
17 campus way before Waller County officials acceded to
18 having a voting site on campus.

19 Q. On page 24, you talk about how students
20 organized to protest the plan to cut the number of early
21 voting sites to one, which was the county courthouse.
22 Do you know if there are -- any other comparably sized
23 counties offered early voting only at the main polling
24 site?

25 A. No, I don't.

1 Q. Are you saying that the plan in Waller County
2 was intended uniquely to adversely affect Prairie View
3 students?

4 A. Yes. I would say that, because PVAMU students
5 make up the largest African-American voting cohort in
6 the city of Prairie View. There's over 8,000 students
7 there. 82 percent are black as of 2010, and reducing
8 the number of early voting sites uniquely affects that
9 population.

10 Q. And you say "uniquely affects" them. Does it
11 affect other people in the county, maybe white citizens,
12 say, down in Brookshire in the southern part of the
13 county? They're farther away from Hempstead than
14 Prairie View is, aren't they?

15 A. Yeah. I would say it's going to impact -- it
16 would -- it would have disparate impact on PVAMU
17 students, but it could have impact on other -- other
18 groups as well.

19 Q. And those other groups may have to go further
20 to vote than -- early than the Prairie View students
21 would, might they not?

22 A. Perhaps, depending on if it's just one polling
23 site.

24 Q. Okay. Now, in that year, Prairie View students
25 and others protested, and then the county responded by

1 opening additional polling places, didn't they?

2 A. Yes.

3 Q. Okay. Is that a sign of responsiveness on the
4 part of the county?

5 A. Well, I'd say it's -- it's complex. It's a
6 sign of responsiveness after efforts at voter
7 suppression. So what -- what would be more beneficial
8 is if the county not only was not embarking on a
9 campaign of voter suppression but the county was
10 actually interested in having more students vote and
11 having more access for all the residents of Waller
12 County.

13 Q. Are there legitimate reasons that the county
14 might have to have one -- or one number of polling
15 locations versus another? You know, maybe one rather
16 than three or one -- or three rather than five or
17 something like that?

18 A. No, not inasmuch as those reasons conform with
19 historic patterns of voter discrimination and voter
20 suppression. So no.

21 Q. Now, you mention on page 25 that one of the
22 three additional polling places was located a mile from
23 campus.

24 A. Uh-huh.

25 Q. What was that polling place?

1 A. That might be the county -- I'm not certain.

2 That might be the community center.

3 Q. Okay.

4 A. That might be the community center.

5 Q. And if I tell you that if we go back to that
6 year and look at where the polling site was, that it was
7 at the community center, would you at least
8 hypothetically accept that?

9 A. Yes, I would hypothetically accept that.

10 Q. Okay. What is your source for the distance
11 between the polling place and the campus?

12 A. The source is going to be -- let's see the
13 endnote. Endnote 57. So it's -- it's from -- it's from
14 PBS, "The Walk of Political Engagement at PVAMU." "One
15 Texas School's Long Walk of Political Engagement." So
16 it's from a PBS news hour segment on Prairie View.

17 Q. Okay. And actually there are two cites I think
18 there in footnote 57.

19 A. One is from PVAMU itself. So it's the
20 campus --

21 Q. Right.

22 A. Yeah. The campus and the PBS news hour.

23 Q. And I'm going to tell you, and you can go back
24 and look at it if you want --

25 A. Yeah.

1 Q. -- but that in footnote 25, you have the Burnt
2 Orange Report, and it says the same thing.

3 A. Okay.

4 Q. Have you ever been to Prairie View?

5 A. Yes.

6 Q. When did you go?

7 A. I went this past late spring --

8 Q. Okay.

9 A. -- and spent, you know --

10 Q. Was that in preparation for writing this
11 report?

12 A. No. I was there to give a talk and give a
13 lecture, and at the same time, because of the report, I
14 was deeply interested and invested in the campus, and so
15 I really -- I talked to people, did not disclose any of
16 this, and -- and talked to them about their -- you know,
17 their campus and, you know, just the whole -- you know,
18 higher education and just the whole history of the
19 place. So it was a very, very interesting visit, a
20 beautiful campus, and it was -- it was -- it was
21 definitely a great -- a great place to be and to see.

22 Q. Did you go by the community center?

23 A. I drove around campus, and I think I -- I
24 probably passed the community center because I drove --
25 I really in the car went through the entire campus --

1 Q. Okay.

2 A. -- because I wanted to -- I didn't walk the
3 entire campus, but I drove around the entire campus to
4 get a feel of -- to get a feel of it.

5 Q. Now, you talk about how the polling place, the
6 off -- or the early voting polling place was more than a
7 mile off campus -- more than a mile off campus I think
8 is what it says.

9 A. Well, it said, I think, "Located one mile."

10 Q. Okay.

11 A. But I think the campus -- the polling -- the
12 community center is about a half a mile away. So I'm
13 not sure if this -- the one that they're saying is
14 located one mile, if that was the community center from
15 2004.

16 Q. I'm going to hand you this -- and let the court
17 reporter keep one -- what I've marked as Exhibit 2.

18 (EXHIBIT NO. 2 MARKED)

19 Q. (BY MR. HEATH) Do you recognize that as an
20 aerial photo of the Prairie View -- of a portion of the
21 Prairie View campus?

22 A. Yes.

23 Q. Okay.

24 MR. CUSICK: And, sorry, just -- is
25 this -- I just want to note for the record -- is this

1 from 2019, this image?

2 MR. HEATH: It -- I think it's probably
3 from Google Maps. It's a satellite but...

4 MS. DORSEY: It's from 2018 because
5 there's a building here now --

6 MR. HEATH: Okay.

7 MS. DORSEY: -- or before.

8 MR. HEATH: It's probably from 2018 or so,
9 but I think the buildings are all in the same place.

10 Q. (BY MR. HEATH) And does that indicate where
11 the -- do you see the area where the community center
12 is?

13 A. Yes.

14 Q. All right. And also where the student --
15 memorial student center is?

16 A. Yes.

17 Q. Okay. And the distance between those is
18 significantly less than a mile, isn't it?

19 A. Yes, it is.

20 Q. All right. And, in fact, is it fair to say
21 that the community center is adjacent to the campus,
22 essentially on the edge of the campus?

23 A. Yeah. I would say it was on the edge of -- of
24 the campus.

25 Q. All right. Do you think there's any part of

1 the campus that is more than a mile or a mile from the
2 community center?

3 A. You know, I'm not -- I'm not sure.

4 Q. Okay. You talked about -- now, occasionally
5 over the years there may have been another instance or
6 two where perhaps because of the unavailability of the
7 community center, which I think was rebuilt, early
8 voting sites were at other spots --

9 A. Uh-huh.

10 Q. -- essentially across the street from the
11 campus, perhaps a block away. Is it fair to say that
12 those are reasonably convenient to the campus?

13 A. No, I wouldn't say it's fair to say that,
14 because when you go around the campus, one, there's --
15 there's a kind of -- there's that -- there's that state
16 loop, and I don't know what they're calling -- there's
17 something I think the students are calling the Sandra
18 Bland Highway, but there -- there are parts of the
19 campus that are much less accessible than -- than others
20 in a way when you're -- when you're coming into the
21 campus, and there's more of -- I don't know if it's --
22 is it a two-lane -- when you come through the -- and I'm
23 not seeing it here. When you come through the -- come
24 off the highway to get there -- because I just was
25 there. And so there's a part of it that -- if something

1 was there, it actually -- it would be sort of very
2 inconvenient when you're -- when you're just coming off
3 of the -- to get to Prairie View. So I don't -- it
4 really depends on where, because I was just there, and I
5 definitely noticed before you come into the campus,
6 there are other parts where it would be -- it wouldn't
7 be -- it wouldn't be very accessible.

8 Q. But looking at the aerial photo, the community
9 center is not across any road from the campus, is it?

10 A. No. It's -- the community center is just not
11 centrally located.

12 Q. Okay.

13 A. Yeah.

14 Q. You mention on page 25 that more than 700 votes
15 were challenged at the Prairie View polling location.

16 A. Uh-huh.

17 Q. Who did those challenges?

18 A. You know, I'm not sure if that's Waller County.
19 I would probably think that's Waller County officials or
20 maybe -- I don't know if it's voter deputies because of
21 how Texas works, but I know that they -- they were --
22 they were challenged, and part of the consent decree
23 after, with Waller County, was that those were going to
24 be reprocessed because most of those who were challenged
25 were -- were black voters.

1 Q. Do you know -- but you don't know that any of
2 the challenges were made by the county itself or county
3 officials? Do you know one way or the other?

4 A. I'm not -- I'm not certain.

5 Q. Do you know if perhaps True the Vote
6 representatives may have challenged?

7 A. It -- that could -- that could be. I'm not
8 certain --

9 Q. Okay.

10 A. -- who were doing the challenges.

11 Q. And do you know, for example, that they often
12 make a practice of that, True the Vote?

13 A. Yeah. You know, one thing I'll say is that one
14 of the things we get from Judge Charleston is -- is the
15 fact that the county had also -- and this is county
16 officials -- improperly not processed hundreds of
17 ballots from -- from black voters who were trying to
18 register during -- during that period as well.

19 Q. Do you know the details on that?

20 A. The details are -- are from the Washington Peer
21 Review. There's some New York Times and other stories.
22 Part of it is that -- is that intimidation from the
23 antivoting fraud groups that -- like True the Vote that
24 you're -- you're mentioning, but part of it was the
25 number of, you know, voter registration cards

1 unprocessed in the election office after election day,
2 and that's -- that is in Waller County. And from
3 here -- from that Washington Peer Review article, you
4 get that there was a joint U.S. Department of Justice
5 and Texas Attorney General investigation of those
6 unprocessed voter registration cards.

7 Q. Okay. But you don't know the details of it, do
8 you?

9 A. I know the details through -- I don't know the
10 exact, yeah, minutia, but generally I've got the gist.

11 Q. Okay. You note on page 26 that Waller County
12 was one of the locations where the Department of Justice
13 sent election observers to monitor the election?

14 A. Yes.

15 Q. Has the Department of Justice sent monitors to
16 other counties, including, for example, Harris County?

17 A. Yes. The DOJ has sent federal observers to
18 other counties as well, including Harris County, but
19 that's not anything to be proud of because it means that
20 there's -- there's real concern there where observers
21 are sent.

22 Q. Do you know if the county fully cooperated with
23 the monitors?

24 A. I'm not sure if the county fully cooperated
25 with the monitors.

1 Q. Do you know if the monitors found any problems?

2 A. I'm not sure if the monitors found problems.

3 Q. If they had, don't you think you would know
4 about it from the sources that you had looked at?

5 A. On some levels, it really depends on how do you
6 define "problems," because certainly this lawsuit is
7 symptomatic that there's still problems but...

8 Q. Do you know if the monitors made a report
9 saying, "Here are election problems in Waller County
10 that we observed"?

11 A. I would assume that they did make a report, but
12 I don't know if they -- I don't know the details of --

13 Q. Okay. But if they had made one that said
14 "These were the particular problems we found," isn't
15 that something you would be likely to have cited in your
16 report?

17 A. Yes, I would have cited it if it came up, but
18 the fact that it didn't come up does not necessarily
19 mean definitively that there were no problems.

20 Q. Okay. You mentioned that Texas -- not talking
21 about Waller County here, but Texas over time has been
22 the recipient of the second largest number of Section 5
23 objections, behind only Mississippi. How does Texas
24 compare in size to the other Section 5 states?

25 A. Well, it depends. I mean, Texas was the

1 largest Section 5 state. So it's bigger than, in terms
2 of geographic size, all the other Section 5 states.

3 Q. Well, in population, would you be surprised if
4 it's roughly the size of Louisiana, Mississippi,
5 Alabama, Georgia, and South Carolina combined?

6 A. No, I wouldn't be surprised at that.

7 Q. All right. And wouldn't you expect simply
8 because it is tremendously larger in population and in
9 number of jurisdictions and so forth than all of the
10 other states, that it's going to have a higher number of
11 objections simply because of the number of jurisdictions
12 involved?

13 A. Well, no. I mean, I would expect Texas to do
14 the right thing. They -- they -- they didn't, but
15 that's what I would expect. I would expect everybody to
16 do the right thing.

17 Q. Do you have any idea what percentage of Texas
18 submissions draw an objection or what the percentages
19 are of the other Section 5 states?

20 A. No.

21 Q. Okay. On page 28, you discuss the Texas voter
22 ID law, which you indicate was found by a D.C. district
23 court to be objectionable under Section 5. Was part of
24 the objection to the voter ID bill that it didn't
25 recognize student IDs as being acceptable?

1 A. I believe that was part of the objection, or at
2 least that was part of the objection that Plaintiffs
3 were making in the sense of those who were filing --
4 those who were protesting against it are making that
5 claim, especially -- and I think I cite also Attorney
6 General Eric Holder, who says that it was
7 unconstitutional in 2011. He said it at the LBJ School
8 because they were taking gun licenses as -- as
9 identification but not taking student identification.
10 So certainly it's fine to take gun licenses but to take
11 gun licenses and not students -- it's pretty incredible
12 to say that both don't count as valid ID.

13 Q. Did the voter ID law by, for example, not
14 recognizing student IDs affect Prairie View students
15 differently than it affected other college students --

16 A. Yes.

17 Q. -- who might have had a student ID?

18 A. Well, yes, because I think black -- I don't --
19 I don't have a -- a cite for this, but I know I -- it's
20 there. Black college students in general are less
21 likely to be registered gun owners and have a gun
22 license than -- than their white -- white counterparts.
23 So disproportionately that would actually impact them in
24 the state of Texas more than white -- white college
25 students.

1 Q. Do you think very many college students have
2 concealed handgun licenses I think is the ID that --

3 A. There's going to be --

4 Q. -- a concealed carrying license?

5 A. There's going to be many more white college
6 students that have that than African-American college
7 students.

8 Q. Do you think very many college students have
9 concealed carry permits?

10 A. Well, it depends. You'd have to go state by
11 state. So I'd say it really just depends.

12 Q. In Texas?

13 A. I'd say in Texas there's probably a good amount
14 that -- that do. You know, I don't know what the
15 numbers are, but certainly African-American students
16 would be a real small minority within that -- within
17 that group.

18 Q. If they -- if the percentages are comparable or
19 even if the percentages for both are minute, would it --
20 would the bill have a similar effect -- the voter ID
21 bill have a similar effect on Prairie View students as
22 it does on college students generally?

23 MR. CUSICK: Objection. Just outside the
24 scope of his report and calls for a legal conclusion.

25 But you can answer.

1 Q. (BY MR. HEATH) Go ahead and answer.

2 A. Yeah. I would say that it's not going to have
3 the same -- it would have disparate impact on Prairie
4 View students because Prairie View students would be
5 less likely to have the -- one of the official forms of
6 ID that these voter ID laws were saying were acceptable
7 and more likely to have a student ID, which by saying
8 that that wasn't an acceptable form of ID actually
9 disproportionately targets not just college students but
10 specifically black college students who are more likely
11 to have their college ID as their main form of ID than
12 some kind of Texas State ID.

13 Q. On page 29, you indicate that in the 2016 en
14 banc Fifth Circuit -- in 2016, the en banc Fifth Circuit
15 affirmed the lower court decision that the voter ID law
16 is racially discriminatory, and in the last sentence of
17 that paragraph, you say, "There was credible evidence
18 that discriminatory intent voted" -- "motivated the
19 voter ID law." Is that a correct reading of your
20 report?

21 A. Yeah. That's a quote from the Veasey v. Abbott
22 case.

23 Q. Okay. In fact, if we look at the Fifth Circuit
24 opinion, did they reverse the lower court finding of
25 discriminatory intent and discriminatory effect?

1 A. And this is the discriminatory --

2 Q. That's the --

3 A. -- effect claim?

4 Q. I'm handing you the en banc Fifth Circuit
5 opinion. Turn to page 35.

6 A. Uh-huh.

7 Q. Or actually that they reversed the
8 discriminatory purpose or intent claim and remanded it
9 for reconsideration of that.

10 THE WITNESS: So this right here?

11 MR. CUSICK: (Nods head.)

12 Q. (BY MR. HEATH) And if you look, it says, "We
13 reverse the district court's judgment that SB 14 was
14 passed with a racially discriminatory purpose and remand
15 for the district court to consider this claim in light
16 of the guidance we provided in this opinion."

17 A. Well, they're asking for a reevaluation.

18 Q. Okay. But they reversed the finding and they
19 remand it for further consideration --

20 A. Uh-huh.

21 Q. -- is that correct?

22 A. Yes.

23 Q. Okay.

24 MS. ADEN: And for clarification, you're
25 talking about discriminatory purpose only because I

1 think you rephrased your question?

2 MR. HEATH: Right.

3 MS. ADEN: Okay.

4 Q. (BY MR. HEATH) Now, on page 31, you talk about
5 a 2016 effort to preserve the on-campus polling place
6 that had been achieved --

7 A. In 20- --

8 Q. -- in 2013.

9 A. Yeah. Uh-huh.

10 Q. Here, are we talking about the election day
11 polling place rather than the early voting polling
12 place?

13 A. I think I'm talking about both, because you can
14 vote early on the main -- on the -- in the student union
15 too. That was one of the sites where you could vote
16 early.

17 Q. Well, wasn't 2013 when election day voting was
18 moved -- or located at the memorial student center?

19 A. Yes.

20 Q. Okay. When there were conversations in 2016
21 about moving it from the student center, wasn't the
22 conversation -- or do you know if the conversation was
23 merely about moving it to another on-campus location --

24 A. No.

25 Q. -- not off campus but another on-campus --

1 A. They were saying county -- the conversation was
2 moving it to the county courthouse in Hempstead, which
3 is five miles away, or in Brookshire, which is 25 miles
4 away, and that's the -- that was the effort by Waller
5 County officials to eliminate six early voting polling
6 places.

7 Q. So is it your testimony and that you are
8 relying on the fact that in 2013, early voting was
9 occurring at the student center?

10 A. I'm not sure if early voting was occurring at
11 the student center, and I wasn't -- I'm not sure. I
12 believe -- I'm not sure. I'm not sure. I can't...

13 Q. Well, you talk about having won an on-campus
14 voting site in 2013, and then in 2016, students
15 protested so the county officials would not remove --

16 A. Yeah. So it must be --

17 Q. -- the on-campus polling site recently won.

18 A. Yeah. Yeah.

19 Q. So that was the 2013 --

20 A. Yes.

21 Q. -- site?

22 A. Yes.

23 Q. And if that site was the election day site, not
24 the early voting site, are we talking about --

25 A. I'm not -- I'm not sure if it was both or if it

1 just was one. I'm not sure right here.

2 Q. Okay.

3 A. It seems to me like it would be both, but I'm
4 not sure.

5 Q. Okay. And if it wasn't, then this may not be
6 correct. What you say in the report may not be correct
7 if the 2013 polling site was not both election day and
8 early voting; correct?

9 A. Yeah. I'm -- I'm not sure. I think it was
10 based on how I'm reading this, but I'm not -- I'm not
11 sure.

12 Q. Okay. In 2016, was there early -- or, I'm
13 sorry, election day voting at the student center and
14 early voting at the student center and at St. Francis
15 Episcopal Church, which is located one block from the
16 campus?

17 A. I'm not sure about St. Francis Episcopal
18 Church. I think from now reading this that the student
19 center was the site of early voting and November voting.

20 Q. Okay.

21 A. And initially in 2016, what they're trying to
22 do is eliminate the student center as one of the early
23 voting sites as well.

24 Q. For early voting, not for election day --

25 A. Yeah. It seems like --

1 Q. -- is your testimony?

2 A. Yeah. I think it's early based on this.

3 Q. And is it your testimony that the effort was
4 not only to eliminate it but -- from the student center
5 but to move it off campus?

6 A. Yes. Based on what this report says, yes.

7 Q. Okay. You talk on page 32 about a controversy
8 involving student addresses where one of the two
9 potential addresses assigned to Prairie View students
10 was off campus and not in the campus precinct.

11 A. Yes.

12 Q. Did the county assign that address?

13 A. No. The school assigned the address.

14 Q. Okay.

15 A. But the county knowing that the students are
16 residents and knowing that there's been such a long and
17 pernicious history about the residential status of
18 students really utilized the fact that the school
19 provided two residents -- two addresses, one which was
20 in county and one which was out of county by ZIP code --
21 that they utilized that in a way to really subject the
22 students to just further precarity and further
23 intimidation about their vote in a way that based on
24 that -- that long history should never have been
25 something that was up for dispute, even though the

1 county is not the ones who -- who provided the ZIP code.
2 But the administrators at PVAMU, from their perspective,
3 they have no way of providing each of the over 8,000
4 students on campus with an individual address that can
5 show that that dorm, that residence hall is their
6 individual address. So county officials were not just,
7 you know, obtuse and negligent in that context; they
8 were definitely targeting PVAMU students once again in a
9 way that utilizes the fact that they have these -- this
10 address kerfuffle as a pretext to harm their access
11 to -- to voting -- voting rights and citizenship. Yeah.

12 Q. When the address kerfuffle was discovered, did
13 the county take action, along with the Secretary of
14 State, to find a way that the -- the students could vote
15 at the on-campus precinct, which I think is Precinct
16 309, and not in the other precinct, 310?

17 A. Well, those things happened -- and I have it
18 where, you know, Jacob Aronowitz was arrested, who was
19 the field director for Mike Siegel, congressional
20 candidate, after delivering a letter to Judge Duhon and
21 Christy Eason demanding that students be allowed to
22 vote. It was after Representative Sheila Jackson Lee,
23 who was then senior member of the House Committees on
24 Judiciary Homeland Security and Budget -- she released a
25 statement documenting the abuses in Waller County and

1 demanding that the DOJ launch an investigation. She
2 said, "What is happening in Waller County, Texas,
3 appears to be part of an ongoing campaign of abusing
4 state law to disenfranchise minority voters, which is
5 why I'm calling on the U.S. Department of Justice to
6 take appropriate action immediately and enjoin elections
7 administration officials for Waller County, Texas, from
8 implementing their announced plan to impose additional
9 and unreasonable burdens on PVAMU students." So --

10 Q. Was the --

11 A. So then you've got -- you know, you've got
12 different action, and there's a different spotlight that
13 comes on because of that.

14 Q. Was the announced plan that Congresswoman
15 Jackson Lee was talking about having the students fill
16 out a change of address form when they came to vote?

17 A. Well, I'm not sure if that was the announced --
18 announced plan.

19 Q. Well, do you know what the announced plan was
20 then that she's talking about?

21 A. I think she's talking about -- she's talking
22 about efforts by Waller County officials, one, to -- to
23 limit the number of early -- early voting locations and
24 polling locations, but I think it's definitely, yes,
25 connected to the address of the students too at that

1 time.

2 Q. Do you know if the county arranged to have the
3 students who were faced with that address issue show up,
4 vote, fill out a change of address card so that -- or
5 form so that the issue doesn't arise again, and cast a
6 vote, which was a direct vote, not a provisional vote?
7 Do you think -- do you understand that happened?

8 A. Yes, I think that that did happen.

9 Q. Do you know of a better way to solve the
10 problem where the students are registered under a
11 particular address and you need to change that address
12 than having the students fill out a form to say, "Change
13 it to the proper one"?

14 A. Well, I think the --

15 MR. CUSICK: Objection. Outside the
16 scope.

17 THE WITNESS: Yeah. I think the county
18 could just understand that all PVAMU students are -- are
19 residents of Prairie View. So they don't -- they don't
20 need a change of address form for their -- to have their
21 votes counted because they're -- just being a student
22 there, they're in Prairie View, Texas, and they are
23 residents, and that -- that is something that is
24 established law from 1979, that they are residents. So
25 just by virtue of being students on campus, the county

1 should probably have that the students can have just --
2 just one address where the school doesn't have to give
3 them two ZIP codes, and they -- really the students
4 should be grandfathered into this because of this long,
5 vicious history. That's kind of -- one of the
6 interesting parts of this is how Waller County continues
7 to target these students in the worst way, and you would
8 think that their -- their behavior would be the exact
9 opposite. Knowing this kind of rough history, you would
10 make it easier for these students to vote and want them
11 to participate in the process. We're not seeing that,
12 unfortunately, but that's what I think would be the --
13 you know, the ethical and the moral thing to do would be
14 that given this long history.

15 Q. (BY MR. HEATH) So you're saying that every
16 student -- if you're a Prairie View student, you should
17 be registered at the university in Precinct 309,
18 which -- that's the campus precinct -- or the one that
19 includes the campus -- and not -- so that if, for
20 example, that student lives in Hempstead and drives down
21 to Prairie View every day to go to school, that he or
22 she should be registered in 309 and not in whatever
23 precinct Hempstead is?

24 A. No. I'm not --

25 MR. CUSICK: Objection again. Outside the

1 scope.

2 THE WITNESS: Yeah. No. No. I'm not
3 saying that. I'm just saying that Prairie View -- PVAMU
4 students, the residency has been established that they
5 can vote in Prairie View, that they are residents of
6 Prairie View, Texas. So I think that once they're
7 registered, the campus address should be enough for
8 their residency requirement, even if the school for
9 whatever reason was giving them these two different --
10 these two different addresses.

11 Q. (BY MR. HEATH) You do mention about
12 Congresswoman Jackson Lee's statement and -- followed by
13 vigorous support by Congressman Lloyd Doggett, who
14 pushed for maintaining early voting places on university
15 campuses across the state, and cite to a Texas Tribune
16 article. Do you see that?

17 A. Yes.

18 Q. I'm just going to show you -- I'm not going to
19 mark this as an exhibit, but it's -- is this the Texas
20 Tribune article that --

21 A. Yeah.

22 Q. -- you cite to in your report? Dr. Joseph --

23 A. Yes.

24 Q. -- is this the one?

25 A. Yes.

1 Q. Okay.

2 A. Yeah.

3 Q. And I have highlighted the part that talks
4 about Congressman Doggett, which I think is on about the
5 third page.

6 A. Yes.

7 Q. Does Congressman Doggett talk at all about
8 Prairie View or any campus other than the Texas State
9 campus?

10 A. Right here he's talking about -- yeah. I
11 mean -- I mean, it depends. I mean, you can -- I mean,
12 you can read this as him talking about just Texas State
13 or really campuses just across the -- the state.

14 Q. It's -- does it say that he and other local
15 Democratic candidates asked the Commissioners to extend
16 hours on campus saying they were concerned the extended
17 wait times were suppressing the vote and talking about
18 the Commissioners, that being the Hays County
19 Commissioners?

20 A. Uh-huh.

21 Q. Okay. So that doesn't have anything to do with
22 Prairie View, does it?

23 A. Well, no, I think it does in the sense that --
24 and that's why I cited it -- is that this idea of voter
25 suppression in higher education on college campuses and

1 really even the residency requirement of students on
2 higher -- on campuses is -- is national. I mean, Texas
3 has these challenges, and we have them nationally as
4 well. So certainly the -- the diminution of early
5 voting hours that we saw Waller County officials try to
6 do has been replicated not just in the state of Texas.
7 It's not just isolated, but it's national, and part of
8 this has to do with this idea of both racial
9 discrimination but also partisan advantage of what are
10 you going to do with, you know, these students and --
11 and their votes and if -- if they're going to upend
12 existing power relations in local -- in local counties
13 and states.

14 Q. Was this Texas Tribune article about a push to
15 have more than 24 hours of early voting spread over
16 three days at an on-campus location at Texas State?

17 A. Yeah. Texas State, but also it talks about --
18 let's see. It talks about UT and the LBJ -- LBJ
19 School -- well, no. This is the LBJ student center. It
20 talks about -- it talks about Austin here at the last
21 paragraph. "Access to early voting on college campuses
22 varies across state" -- "students at UT have access to
23 two on-campus polling places. Tarrant County is
24 splitting up its early voting between several
25 universities, offering three days of early voting at

1 both UT Arlington and Texas Christian." So it's kind of
2 using Texas State as sort of a case study to look at
3 early voting at universities really statewide and what
4 that -- what that entails.

5 Q. Okay. And Texas State is much larger than
6 Prairie View A&M, isn't it?

7 A. I'm not sure how -- what the size of Texas
8 State is.

9 Q. Okay. Does the article say that there is no
10 on-campus early voting at the University of Houston, at
11 Rice, or at the University of North Texas?

12 A. Yes.

13 Q. Okay. And are all of those schools
14 predominantly white?

15 A. The University of Houston -- well, the
16 University of Houston has definitely a robust black
17 population.

18 Q. Uh-huh.

19 A. Rice University and the University of North
20 Texas in Denton are PWI, predominantly white
21 institutions, but at the same time, the University of
22 Texas is a predominantly white institution that -- that
23 does have early voting, and so does Texas Christian and
24 UT Arlington. So...

25 Q. And does it indicate that Texas Christian and

1 UT Arlington are limited amounts of early voting?

2 A. It says, "Offering three days of early voting."

3 Q. Okay. Essentially what was offered on campus
4 at Prairie View A&M; correct?

5 A. Yes. That's what was offered on campus.

6 Q. And then at Prairie View A&M, additionally
7 there were a couple of days adjacent to the campus?

8 A. Yes.

9 Q. Okay. So can we say that Prairie View's -- and
10 by Prairie View, I'm meaning Prairie View A&M.

11 A. Yeah. PVAMU. Yes.

12 Q. Early voting opportunity was less than afforded
13 to college students generally around the state?

14 A. Well, it --

15 Q. Maybe some that have better but college
16 students generally --

17 A. Yeah.

18 MR. CUSICK: Objection. Outside the
19 scope.

20 You can answer.

21 THE WITNESS: Yeah. It really depends
22 because, I mean, there's -- there's equity and there's
23 equality. Right? So in terms of equity and the number
24 of hours that PVAMU students deserved access to for
25 early voting doesn't necessarily mean it's going to

1 correspond with what is happening statewide, especially
2 because they've been such robust participants, but also
3 given the specific history of PVAMU and Waller County
4 with regards to voting rights.

5 Q. (BY MR. HEATH) On page 34, you note that
6 Waller County was again assigned for observation by
7 federal election monitors. Again, did they observe any
8 problems?

9 A. I'm not aware that they observed any problems.

10 Q. Okay. Much of your report focuses on the past
11 failure to have early voting on the campus rather than
12 at a site adjacent to the campus or across the street or
13 perhaps a block away from the campus; is that correct?

14 A. I'd say the report also focuses on the efforts
15 by Waller County officials to reduce the number of early
16 voting sites during the primary election seasons, and in
17 terms of the early voting, even in 2018 -- and how in
18 2018 the -- the county's initial voting plan -- early
19 voting provided no early voting days for PVAMU during
20 the first week of early voting, and this plan was only
21 amended after students sought litigation. So I think
22 it's -- it's -- it's a few -- it's a few different
23 areas. That's one of the areas.

24 Q. Okay. Is it important to have convenient early
25 voting opportunities for nonstudent residents of Prairie

1 View as well as for students?

2 A. Yes, it is important; although PVAMU students
3 comprise, you know, the -- a major portion of...

4 Q. Do you think it's important for the county to
5 accommodate the needs of what I'm going to refer to as
6 the townspeople, the nonstudent folks --

7 A. Yeah. Uh-huh.

8 Q. -- as well as the students?

9 A. Yes. It's important for them to recognize the
10 rights of both, but since PVAMU is -- is where really a
11 large portion of -- of Prairie View voters and voters
12 who are active voters and energized voters are, it
13 becomes a natural central sort of site for polling and
14 for early voting and just voting in general.

15 Q. Is it possible that going onto the campus may
16 be difficult for townspeople?

17 A. Well, I'd say anything is possible. So, yes, I
18 would say for some, it could be difficult. For others,
19 it could be just a central location and really a source
20 of major pride.

21 Q. Now, you work at the University of Texas?

22 A. Yes.

23 Q. Maybe not so much for the LBJ School where
24 they've got the LBJ and Townsend Center parking lots --

25 A. Yeah. Yeah.

1 Q. -- right there, but for the campus generally --

2 A. Yeah.

3 Q. -- is it fair to say that it's pretty hard for
4 folks like me to come onto the campus and go to a
5 location on the campus?

6 A. I don't know about that. Now that I've been
7 there for -- for five years, I'd say that there's campus
8 parking for visitors. They're in parking garage --
9 parking garages, they actually are walkable to campus,
10 you know.

11 Q. Do you know how convenient it is for people in
12 Prairie View?

13 A. I don't know how convenient it is. I drove
14 around the campus, but I can't say I have a knowledge of
15 exactly where all the parking garages and spaces to park
16 if you're an off campus resident are.

17 Q. Is the student center a particularly good
18 location for students?

19 A. I passed the student center. It seemed great,
20 and it seemed central. It seems to me like it's -- I
21 think all student centers -- I mean, you know, you
22 talked about UT Austin. I think where the students
23 congregate, besides game day at the Darrell Royal
24 Stadium, is the student center. I mean, I think we call
25 it the SAC. I think we call it the student activities

1 center. And so in a lot of ways, that's probably -- at
2 most universities, the most well-known building on
3 campus is the student activities center.

4 Q. And, in fact -- and I'm thinking this is
5 probably this case at Prairie View much more so than,
6 say, at UT --

7 A. Yeah.

8 Q. -- that it's a place where students will
9 congregate most every day and that those that have meal
10 plans, for example, eat there.

11 A. Yeah. Yes.

12 Q. So they will visit it routinely?

13 A. Absolutely. Yes.

14 Q. Okay. Does having early voting and election
15 day voting for that matter at the student center
16 essentially bring the polling place to the students
17 rather than using a location the students would have to
18 travel to because it's not a place where they normally
19 go?

20 MR. CUSICK: Just objection. Outside the
21 scope.

22 But you can answer.

23 THE WITNESS: Can you repeat that
24 question?

25 Q. (BY MR. HEATH) Okay. Is having early voting

1 and even election day voting at the student center
2 essentially bringing the polling place to the students
3 because they're there every day rather than using a
4 location where the students are going to have to travel
5 to the location because it's a place they don't normally
6 go -- the secondary location is a place they don't
7 normally go?

8 MR. CUSICK: Same objection. Outside the
9 scope.

10 THE WITNESS: Well, I'd say that the
11 polling -- having the polling site on campus has become
12 an increasingly sort of normalized and routinized part
13 of elections because campuses are now recognized as just
14 cities in and of themselves that are a lot of times
15 central corridors and hubs of -- of residential
16 neighborhoods and communities and towns. So that...

17 Q. (BY MR. HEATH) So let me approach this from a
18 little different way and looking not so much at the
19 student center voting but the early -- the other early
20 voting sites around the county. So that -- places like
21 the county courthouse, a VFW hall, JP courts. I think
22 there was one library. Are those places that people
23 tend to show up at and go to every day like they do to
24 the student center?

25 A. Yes.

1 MR. CUSICK: Objection: Outside the scope
2 but --

3 THE WITNESS: Yes. They are places that
4 people show up to.

5 Q. (BY MR. HEATH) So you think that while people
6 in Waller County may go to the county courthouse to
7 conduct business every so often or whatever, that
8 they're likely to be there every day?

9 A. In the county courthouse?

10 Q. Yes.

11 A. In contrast to?

12 Q. The student center.

13 A. The student center. I'd say the student center
14 would be more highly trafficked than -- than just --
15 really just about anyplace.

16 Q. And JP court, you're probably not going to go
17 there unless you have a traffic ticket, are you?

18 MR. CUSICK: Objection: Outside the
19 scope.

20 But go ahead.

21 THE WITNESS: Yes. I would say that's
22 correct.

23 Q. (BY MR. HEATH) All right. And unless you're a
24 member of the VFW and then only on certain days, you're
25 probably not going to be going there every day, are you?

1 MR. CUSICK: Objection: Outside the
2 scope.

3 But you --

4 THE WITNESS: Yeah, I would probably say
5 that that's true.

6 Q. (BY MR. HEATH) Okay. If rather than being
7 located on campus, the early voting site were located
8 adjacent to the campus, would the inconvenience to
9 students be any greater than the inconvenience faced by
10 other people in the county who might have to travel to
11 the courthouse or JP court or the VFW hall or someplace
12 like that to vote?

13 MR. CUSICK: Objection: Outside the
14 scope.

15 THE WITNESS: Well, I think it's -- it
16 is -- it is an inconvenience, and I think that the very
17 fact that the polling place has already been opened in
18 the student activities center and had great success
19 there shows that it's not just even an inconvenience,
20 it's sort of targeting those students because success
21 breeds success. So you've got the early polling site at
22 the student activities center, so there's really no --
23 there's no just cause, except for trying to suppress
24 turnout and enthusiasm, for putting it in a much smaller
25 place that's adjacent to campus when you've had such

1 success since 2013 with -- with placing it in the -- in
2 the student activities center.

3 Q. (BY MR. HEATH) And to go back to my original
4 question. Is the in- -- if people have to go to the
5 county courthouse to vote --

6 A. Uh-huh.

7 Q. -- or to the JP court where they do not
8 normally go every day --

9 A. Yes.

10 Q. -- is there some inconvenience to them going to
11 the place where the polling place is rather than the
12 polling place essentially coming to where they are?

13 MR. CUSICK: Objection: Outside the
14 scope.

15 THE WITNESS: I'd say yes, but when we
16 think about students at Prairie View, because of the
17 specific history of PVAMU with Waller County officials,
18 it is a greater inconvenience because they're continuing
19 to be targeted and they're continuing to be the -- the
20 victims of voter suppression, you know, by -- by doing
21 several things. I mean, students at PVAMU weren't
22 allowed to vote in the 1976 presidential election. They
23 weren't allowed to vote in the 1972 presidential
24 election or state elections. When you think about what
25 they've experienced, they've experienced voter

1 marginalization and disenfranchisement even after the
2 heroic period of the civil rights movement. So the idea
3 of disallowing them from having a central location on
4 campus where it has worked for them since 2013 and to
5 constantly put that in a state of precarity by at times
6 not allowing -- or disallowing both early voting and
7 disallowing polling on campus or threatening to end
8 that, it taps into that very specific particular history
9 of racial discrimination and voting rights
10 discrimination in Waller County that all these students
11 continue to face because the county has refused to
12 behave and act in good faith consistently by trying to
13 not only end this history of voting suppression but by
14 trying to really do all that it can in its power to
15 allow and invite and encourage voting access and
16 citizenship by PVAMU students.

17 Q. (BY MR. HEATH) So to summarize what you're
18 saying, is it that it's important to have this
19 particularly convenient opportunity for Prairie View
20 students because of what happened in the past?

21 MR. CUSICK: Objection: Outside the
22 scope.

23 THE WITNESS: I think it's --

24 Q. (BY MR. HEATH) Is that what you're saying?

25 A. No. I think it's important because of the

1 continuing efforts to marginalize, to suppress, to
2 dilute their votes, but I think that it's important for
3 all of us to know that the continuing efforts -- there's
4 a reason why these efforts continue. Because on the
5 face of it, you say, "Well, why is this happening in
6 2019 in" -- "in Waller County in a way that, say, it's
7 not happening in other parts of Texas?" The reason it's
8 happening is because Waller County has a very specific
9 history of voting rights suppression and discrimination
10 against PVAMU students who are trying to exercise their
11 right to vote. So it's not saying that this should
12 happen only because of the past. It's saying it's
13 contemporaneous, but it's all of us.

14 Like, you're here and I'm here today. We
15 have an origin story. You were born once or you
16 wouldn't be here. So today is connected to whenever you
17 were born. My mother was born in 1939. She's going to
18 be 81 -- God bless her -- on May 3rd of next year. My
19 mom tells me all the time about what it was like to be
20 five, six, seven years old in 1945, 1946 in a way that
21 I'll never have an understanding because I was born in
22 1972, but part of what shapes our contemporary reality
23 is that origin story, which is why I think I chose the
24 best discipline in the world, which is history. You
25 know, and I think being an American is the best thing in

1 the world too, being an American historian, and
2 certainly African-American history is part of American
3 history.

4 So Waller County, that history, is
5 connected -- and what's interesting for all of us --
6 those students, they might be getting a cheeseburger in
7 Prairie View. They might not understand the history of
8 eating that cheeseburger, and maybe it's in an
9 interracial, you know, restaurant where blacks and
10 whites -- where in another historical context, they
11 couldn't eat the cheeseburger in Prairie -- Prairie
12 View. They couldn't, not with, you know, Steven or John
13 or -- you know, or you in the same room with them.
14 Right? But that history matters. Right? That history
15 matters, and sometimes that history shapes the present
16 for good and real positive benefits and sometimes it's
17 shaping the present -- present in ways that echo the
18 past in ways that we -- we -- like I said before, we're
19 better than that. I think we're all better than that.
20 So the -- the positive of the students protesting at
21 Prairie View is that we are better than that. That's
22 why they're protesting. They want and they believe in
23 democracy and they believe in American citizenship and
24 voting rights.

25 Q. You talked about this as something that -- or

1 happens in Prairie View. It's not happening across the
2 state. Actually, the early voting opportunities for
3 students at Prairie View may be better than other
4 places -- other colleges in the state, might they not?

5 A. Well, I think --

6 MR. CUSICK: That's outside the scope.

7 THE WITNESS: I think that if -- if they
8 are, Waller County should not congratulate itself
9 because of all these other efforts contemporaneously and
10 historically to disallow PVAMU students from exercising
11 their franchise.

12 Q. (BY MR. HEATH) And you mentioned about the
13 students eating the cheeseburger --

14 A. Yes.

15 Q. -- and not understanding.

16 A. But they've been forced to understand a lot
17 too.

18 Q. The things that happened in 1972, for example,
19 which is where you start your narrative, that was
20 probably before these students' parents were even
21 students, wasn't it?

22 A. Well, don't make us too old because I've got
23 kids, and they're still in -- you know, so no.
24 That's -- I start in '71, but what's so interesting is
25 that, you know, the VRA is passed in '65. So students

1 at PVAMU should have been voting since the passage of
2 the VRA. The VRA is passed August 6, 1965, by Lyndon
3 Johnson and Congress. Right? So they should have been
4 allowed to vote starting in those -- those elections.
5 Right? And so PVAMU students are denied voting rights
6 for really upwards of 15 years after the Voting Rights,
7 and it's not settled that they're residents and they can
8 vote there until 1979. And then the story continues of
9 different efforts by Waller County officials to -- to
10 challenge and intimidate and curtail the exercise of --
11 of the franchise. So it's really an incredible --
12 incredible story that continues well into the 21st
13 century, well after what we think of in terms of voting
14 rights as being something that's national -- that's
15 nationally a set of laws. Well after that, we have
16 students who are really year after year, new
17 generation -- because we know every four or six years
18 there's a whole group of college students who graduate,
19 leave UT, leave Rice, leave PVAMU, but each
20 generation -- subsequent generation of post VRA of PVAMU
21 students, they become voting rights experts, and they --
22 they are -- they are litigants, and they have to do what
23 we think of as the work of an earlier generation of
24 Civil Rights activists, including what you were
25 discussing, their -- their grandparents. We're thinking

1 of them -- they're having to do that, and that's what is
2 so bizarre about all of this because it's almost like
3 we've caught ourselves in a little time machine, a time
4 warp, you know.

5 I'm sure you grew up and you watched the
6 Twilight Zone episodes. I love the -- and I'm talking
7 about the original, Rod Serling. And when you look at
8 those episodes, sometimes he takes you back to the old
9 west, and it's the 19th century, and he's doing an
10 allegory between sort of Cold War America and the old
11 west, and they're really terrific -- terrific. It's
12 brilliant. And this is how this is. This is almost
13 like you -- you find out about Prairie View, and you're
14 almost like -- well, I mean, you're almost ready to read
15 the paper and Jack Kennedy is still alive and Martin
16 Luther King Jr. is still alive and all these people from
17 the epic is still -- Eisenhower might be president, and
18 you've got these students, well, they want the right to
19 vote. You know, it's very poignant.

20 But here's the problem. It's 2019, and
21 we've got cell phones and, you know, computers and
22 students can't vote. I mean, this is a real -- it's a
23 real time warp. Right? But not in a positive way.
24 Because I love history, and on some levels, I'd love to
25 go back to some of those times to just be there and

1 see -- you know, I'd love to see an Edsel car and see
2 different -- because, yeah, I'm a history geek or buff,
3 whatever you want to call it, but not in terms of
4 people's civil rights and their citizenship.

5 Q. You specifically mentioned at one point in your
6 report and you mentioned it in your discussion a little
7 while ago about the fact that initially there are no
8 early voting days in the first week of early voting.

9 A. Yeah.

10 Q. Why is it important to have early voting on
11 campus in the first week rather than the second week?

12 MR. CUSICK: Objection: Outside the
13 scope.

14 THE WITNESS: I think it's important
15 for -- for a couple of reasons. I think, one, there was
16 early voting in other parts of the county, but then also
17 the first week was homecoming, and the county said they
18 didn't want to put it during homecoming because it would
19 be a distraction, but during homecoming is when so many
20 people are on campuses, including UT's homecoming, where
21 you're going to get even more access and excitement.
22 Those are the type of -- it's the exact wrong reasoning.
23 You -- you would want early voting when you're going to
24 have the most people on campus. You're going to have
25 parents visiting students and their children who are

1 wanting their children to be active citizens and
2 reminding -- seeing a polling site right on campus would
3 invigorate the process and really invigorate the
4 Democratic process in Waller County.

5 Q. (BY MR. HEATH) Are you aware that there was
6 initially a plan to have early voting on the campus
7 during the first week but that the Democratic chairman
8 asked to change it to the second week once he discovered
9 that it was homecoming week?

10 A. I am aware of that, and I'm aware that PVAMU
11 students were not consulted and PVAMU administrators
12 were not consulted. So that is an official just really
13 making a decision by fiat in a way that's not
14 consultative or collaborative with both students and
15 officials who are right down the street, who that
16 official could have absolutely contacted and said, "Hey,
17 is this a good idea?" And what they would have found is
18 that, no, it was not a good idea. And PVAMU students --
19 the interesting part about this history is that they are
20 thirsty for citizenship and for higher education for
21 their rights. They are -- they are fully invested in
22 America and in voting rights, and so these are the exact
23 kind of students that we want. We want -- again, we
24 want people to vote. That's the whole thing. We want
25 citizens to vote. The whole process of our democracy is

1 predicated on active citizenship. So that's -- what's
2 so sad here is that there are these thousands of
3 students who want to vote. Some of them even run for
4 local office. So it even shows us the numbers who want
5 to be civically engaged and active, and, yet, they're
6 being systematically denied that right or having that
7 right curtailed for -- for -- for long-standing
8 historical reasons but also now contemporaneous reasons
9 as well.

10 Q. A couple of things. Do you know if generally
11 the African-American community is more likely to support
12 the Democratic candidate?

13 MR. CUSICK: Objection: Outside the
14 scope.

15 THE WITNESS: Yeah. It depends. Over
16 time, that's change. So we can -- as a historian, I'm
17 going to have to give you a long view. So when you
18 think about --

19 MS. ADEN: That's your fault.

20 THE WITNESS: -- when you think about --
21 but let me finish answering the question. So when we
22 think about this, historically African-Americans have
23 been Republicans historically.

24 Q. (BY MR. HEATH) Uh-huh.

25 A. For most of the history of the Republican

1 party, African-Americans -- and we're thinking about
2 people like Frederick Douglass. We're thinking about W.
3 E. B. Du Bois. We're thinking about so many -- Ida B.
4 Wells. They were Republicans. Republicans -- when we
5 think about Abraham Lincoln and the party that grows out
6 of really the combination of the wigs and the
7 no-nothings and others of -- of the mid 19th century
8 becomes a party of antislavery. And so when we think
9 about African-Americans and the Republican party,
10 that -- that connection is really a deep, enduring, and
11 long connection.

12 In fact, the African-Americans'
13 relationships with the Democratic party historically has
14 been very, very fraught. Until very, very recently, the
15 Democratic party was perceived as the party of racial
16 slavery. It was the party of Jim Eastland and racial
17 segregation. It was the party that was considered very
18 inhospitable to -- to African-Americans. So in a way
19 that relationship only begins to change at the national
20 level in the 1960s with the election of John F. Kennedy,
21 and John F. Kennedy in 1960 -- he was instrumental in
22 helping Martin Luther King Jr. get released from prison
23 after being incarcerated in -- in October of 1960 in
24 Atlanta, Georgia, and then the Kennedy -- the Kennedy
25 campaign releases a pamphlet that says that Kennedy is a

1 candidate with a heart who helped Dr. King get released
2 in contrast to "No comment Nixon." Richard Nixon was
3 Vice President of the United States at the time and
4 running and loses a very, very close election to John F.
5 Kennedy. Certainly Lyndon Johnson and Lyndon Johnson's
6 very vociferous, eloquent support for civil rights,
7 voting rights with the Civil Rights Act of '64,
8 July 2nd, the Voting Rights Act of '65, August 6th. The
9 great society war on poverty really helped to transform
10 the relationship between African-Americans and the
11 Democratic party.

12 Now, at the local level, many black remain
13 Republicans. You know, Martin Luther King Jr.'s father,
14 Martin Luther King Sr., always remained a registered
15 Republican, refused to do anything different, even
16 though he supports Jack Kennedy in '60 because he got
17 his son out of prison.

18 So right now, yeah, the -- the -- we're in
19 2019. You'd say that a majority of African-Americans
20 are -- are registered more as Democrats than
21 Republicans, and in -- when you think about presidential
22 elections, they vote that way, but essentially more so
23 black women than black men. I think the current
24 president got maybe 10 or 12 percent support of black
25 men in the -- in the 2016 election. So that --

1 historically black voters have been identified strongly
2 with the Republican party. Of late, they've been more
3 identified with the Democratic party. Yes.

4 Q. And, in fact, the -- some of the people you
5 cited as making special efforts to be sure that students
6 had maximum opportunity to vote at Prairie View were
7 Democratic officials or candidates such as Mr. Siegel
8 and Congresswoman Jackson Lee; is that correct?

9 A. Well, yes, but I also cite -- I say that and
10 give him his due that now Governor Greg Abbott was
11 actually on the side of students in 2004 and very, very
12 strong in terms of defending their -- their voting
13 rights. I mean, you know, political situations change,
14 but people deserve credit when they're doing the right
15 thing. So there have been Republican officials in the
16 state who are supportive of voting rights for all
17 people. Absolutely.

18 Q. Do you think that the Democratic chairman when
19 he suggested that having early voting other than
20 homecoming week would be more convenient for students
21 would have had the idea that -- or it's in his interests
22 to be sure that Prairie View students have the
23 opportunity to vote because they are much more likely to
24 be Democratic voters than Republican voters?

25 MR. CUSICK: Objection: Outside the

1 scope. And just for clarification, you said the
2 Democratic chair?

3 MR. HEATH: Yeah. The Democratic chair.

4 MR. CUSICK: And you said, "He"?

5 MR. HEATH: Or whoever the --

6 MS. DORSEY: It's a she.

7 MR. HEATH: Oh, I'm sorry.

8 MR. CUSICK: Just for the record's
9 purpose, I just wanted to make sure. But objection:
10 Outside the scope of the evidence.

11 THE WITNESS: You know, I can't infer why
12 she -- she made that decision or not. So I -- I would
13 say I can't infer why.

14 Q. (BY MR. HEATH) Do you think it would be in her
15 interests or her party's interest to make sure that
16 the -- that the Prairie View students had maximum
17 opportunity to vote?

18 MR. CUSICK: Objection: Outside the
19 scope.

20 THE WITNESS: Not necessarily. It
21 depends, because a party's interests could be disrupted
22 by a voting block even within that party -- right? --
23 specific interests. So not necessarily.

24 Q. (BY MR. HEATH) And we're talking here -- and
25 my question is in the context of the November 2018

1 election, not the primary.

2 A. Not the primary but the election.

3 Q. But the November election.

4 MR. CUSICK: Objection: Outside the
5 scope.

6 THE WITNESS: Yeah, I understand your
7 question, but I'd still answer it the same.

8 Q. (BY MR. HEATH) Okay. I noticed that about
9 roughly 50 of your citations were to newspapers,
10 magazine articles --

11 A. Yep.

12 Q. -- website articles, that sort of thing. There
13 are also some citations to politicians who are making
14 statements in the middle of an election season or
15 statements from persons who are advancing particular
16 positions or causes. While I think we can all agree
17 there's value in these, do we run the risk of sometimes
18 getting an exaggerated view or a nondispassionate
19 analysis by looking to sources where people are
20 advancing a cause or maybe a newspaper article that may
21 not be as heavily sourced as, say, an academic journal?

22 A. No. No, I don't think so. I think what --
23 what the report tries to do is create a mosaic and use
24 different citations. I think there's maybe a hundred
25 or -- you know, close to a hundred citations in there.

1 So there's 88. So you're using, you know, definitely
2 scholarly articles, referee journals. You're reading
3 books that have been published by academic publishers,
4 law review articles, but then also different newspaper
5 and other accounts as well and trying to get a holistic
6 picture. So I would say the process I was after was
7 trying to get a holistic picture of this -- of this
8 story.

9 Q. Is it true that sometimes these articles, for
10 example -- and sometimes they rely on each other -- so
11 that we have things such as the distance to --

12 A. Yeah.

13 Q. -- the community center or early --

14 A. Yeah.

15 Q. -- voting site -- which I think we can agree is
16 not accurately reflected in the articles, and, yet, it's
17 repeated again and again and again as one article relies
18 on another?

19 A. Well, I don't know about the distance, and
20 certainly there's going to be -- when you think about
21 sources, you know, any source, whether it's a newspaper
22 article, even a Supreme Court opinion, can have an error
23 in the source. So if there's an error in the source,
24 there can be an error in whatever is coming out of that
25 reading of that source. So that -- anything is liable

1 to have some -- some degree of error in it, whether it's
2 a congressional record. You know, so I think that's a
3 truism about -- about all of our sources.

4 Q. I think --

5 MR. HEATH: I was going to ask the county
6 attorney if she had anything, but as she just stepped
7 out -- so I'm about to pass. Do you want to take just a
8 minute for -- do y'all think -- and when she gets back,
9 I'll ask to make sure she doesn't have anything.

10 MR. CUSICK: Okay.

11 (RECESS FROM 1:13 p.m. - 1:23 p.m.)

12 MR. HEATH: We will pass the witness.

13 EXAMINATION

14 QUESTIONS BY MR. CUSICK:

15 Q. So, Dr. Joseph, you offered a nonexpert opinion
16 that as your opinion as a layperson on a resolution to
17 address the rural addressing issue in Prairie View and
18 how it might affect Prairie View A&M students. Do you
19 think Waller County should take the responsibility to do
20 that, to study it, to come up with a resolution moving
21 forward past 2018?

22 A. Yes. Absolutely. The county should be the
23 architect of that resolution.

24 Q. And is it your understand that the county could
25 work with the United States Postal Service to come up

1 with some type of resolution?

2 A. Yes. They could work with the post office to
3 provide just a single address that allows the students
4 to vote in an unfettered fashion in perpetuity.

5 Q. And just to be clear, for the purposes of your
6 report, you were not asked to opine on this; correct?

7 A. Correct.

8 Q. And you weren't retained as an expert the way
9 as a consultant might be to study the addressing issues
10 or to develop some type of resolution to this?

11 A. Yes. That's correct.

12 Q. You testified about the frequency at which
13 Waller County residents travel to the county courthouse
14 or Justice of the Peace, the VAW. When you responded to
15 those empirical questions, were you offering an expert
16 opinion or a nonexpert opinion?

17 A. A nonexpert opinion.

18 Q. So in other words, you didn't study this?

19 A. No, I did not study this.

20 Q. Your testimony also touched on inconveniences
21 that might occasion visits to other locations by Waller
22 County residents. In general, based on your visit to
23 Waller County, would you say that people in Waller
24 County generally drive to various locations around the
25 county during the course of their daily life?

1 A. Yes.

2 Q. That is to say even that -- that even if they
3 don't drive specifically to the courthouse or another
4 location, they do drive in various places throughout the
5 county as a matter of course?

6 A. Yes.

7 Q. And how does that compare for students in terms
8 of driving around the county?

9 A. Well, students have virtually no public
10 transportation access, and they don't generally own
11 cars. So students are much less mobile than other
12 residents.

13 Q. Would you say that Prairie View A&M students
14 travel around the county to off -- to locations off
15 campus on a daily basis in the same way that county
16 residents do?

17 A. No.

18 Q. And is it your understanding that Prairie View
19 A&M students face transportation difficulties that other
20 residents in the county might not face?

21 A. Yes.

22 Q. And why is that?

23 A. The Burton Report talks about mobility. It
24 talks about poverty and income, transportation in
25 Prairie View and how really even nonPVAMU students have

1 less access to mobility than -- than PVAMU -- excuse me,
2 nonPVAMU students have more access to mobility than
3 PVAMU students, and African-American nonPVAMU students
4 are more likely to be ride -- ride sharers than own a
5 single vehicle. The highest ownership is among white
6 residents in Waller County of -- of a vehicle. So, yes,
7 PVAMU students have a mobility issue.

8 Q. And just for the record, you're referring to
9 Bill Cooper's expert report?

10 A. Yes.

11 Q. You testified generally about the convenience
12 that students faced to early voting. And, again, this
13 is based not on your expert opinion but on your
14 experience with being at UT Austin; correct?

15 A. Yes.

16 Q. And is it your understanding that Prairie View
17 A&M students for a variety of reasons might rely on
18 early voting in greater reliance than other college
19 students throughout -- throughout the state?

20 A. Yes.

21 Q. And what are some of the reasons might that be?

22 A. Well, I think that in Prairie View because of
23 the lack of mobility, there really isn't the same
24 ability to use a car or to have public transportation
25 that would give you access to early voting sites. So I

1 think in a lot of ways PVAMU students are stuck right --
2 right on the campus.

3 Q. And you testified about this shared experience
4 at Prairie View A&M students for -- that they might
5 experience where their parents might have attended the
6 college. When you were at Prairie View A&M this past
7 year, did you get the impression that students were
8 familiar with the history of voting discrimination in
9 Waller County?

10 A. Yes. I got the -- I got the sense that the
11 school is very proud of its history and as a
12 historically black college university that's been in
13 Texas for over 150 years and has also shared that
14 history with its students, and that students both from
15 their parents -- but these struggles for voting rights
16 have a shared history and understanding of both the
17 history that they have faced but also their ability to
18 try to bend the ark of history towards justice and
19 fairness.

20 Q. You testified earlier that for black American
21 voters, that they should have been able to vote in 1965,
22 and then you referenced and testified about some of the
23 experiences in Waller County. But shouldn't that have
24 been the case true for all black voters throughout the
25 United States in 1965?

1 A. Yes. After the passage of the Voting Rights
2 Act, there should be no barriers to voting as long as
3 you're an American citizen.

4 Q. And before -- again, you testified about the
5 historical allegiance of black voters and black
6 communities first to Republicans or the Republican party
7 and then to Democrats. Do you know whether Prairie View
8 A&M students universally think of themselves as
9 Democrats?

10 A. No.

11 Q. Would you be surprised that Prairie View A&M
12 students testified at the Commissioners Court meetings
13 that they were not Democrats or Republicans?

14 A. I wouldn't be surprised because college
15 students a lot of times don't have a real party
16 allegiance or partisan allegiance. A lot of them are
17 interested in just very specific issues.

18 Q. And you testified about DOJ objection letters
19 under Section 5 preclearance, and you cited to the ones
20 that occurred. I think around 201 in Texas. Is it your
21 understanding that these objections occurred over
22 multiple presidencies?

23 A. Yes.

24 Q. Both Republican presidents and Democratic
25 presidents?

1 A. Yes.

2 Q. And then towards the end, you testified about
3 news articles, website articles that you cite. Are
4 newspaper articles generally used by historians?

5 A. Yes. They're their primary sources. Yes.

6 Q. And then you also testified about court
7 decisions as well as -- for a more holistic picture; is
8 that correct?

9 A. Yes.

10 Q. Do you believe that the sources you referenced
11 in your report here and discussed today are commonly
12 used by historians?

13 A. Yes.

14 MR. CUSICK: Pass it back.

15 MR. HEATH: No questions.

16 (Deposition concluded at 1:30 p.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAYLA ALLEN, DAMON)
JOHNSON, TREASURE SMITH,)
and THE PANTHER PARTY,)
Plaintiffs,)

VS.)

CIVIL ACTION NO.:
4:18-CV-3985

WALLER COUNTY TEXAS; THE)
WALLER COUNTY)
COMMISSIONERS COURT;)
JUDGE CARBETT "TREY" J.)
DUHON III, in his)
official capacity as the)
Waller County Judge; and)
CHRISTY A. EASON, in her)
official capacity as the)
Waller County Elections)
Administrator,)
Defendants.)

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF PENIEL JOSEPH, PH.D.
VOLUME 1
DECEMBER 16, 2019

I, JAMIE COOLEY, Certified Shorthand Reporter in and
for the State of Texas, hereby certify to the following:

That the witness, PENIEL JOSEPH, PH.D., was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That pursuant to FRCP Rule 30(e)(f), the signature
of the deponent was requested by the deponent or a party
before the completion of the deposition;

That the deposition transcript was submitted on
December 21, 2019, to the witness c/o MR. JOHN S. CUSICK
at the request of the deponent or a party before the
completion of the deposition for examination, signature,
and return to Cooley Reporting by January 19, 2020;

1 That the amount of time used by each party at the
2 deposition is as follows:

3 MR. JOHN S. CUSICK - 00:07

4 MR. C. ROBERT HEATH - 02:06;

5 That pursuant to information given to the deposition
6 officer at the time said testimony was taken, the
7 following includes counsel for all parties of record:

8 FOR THE PLAINTIFFS:

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10 MS. LEAH C. ADEN

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18 FOR THE DEFENDANTS, WALLER COUNTY TEXAS; THE WALLER
19 COUNTY COMMISSIONERS COURT; JUDGE CARBETT "TREY" J.
20 DUHON III, in his official capacity as the Waller County
21 Judge; and CHRISTY A. EASON, in her official capacity as
22 the Waller County Elections Administrator:

23 MR. C. ROBERT HEATH

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17 That \$_____ is the deposition officer's charges
18 to MR. C. ROBERT HEATH, counsel for the Defendants, for
19 preparing the original deposition transcript and any
20 copies of exhibits;

21 That the deposition was delivered in accordance with
22 Rule 30(e)(f) FRCP, and that a copy of this certificate
23 was served on all parties shown herein.

24 I further certify that I am neither counsel for,
25 related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

Jayla Allen, et al. vs. Waller County, Texas, et al.
Peniel Joseph Ph.D. - 12/16/2019

1 Certified to by me on the 21st of December, 2019.

2
3 
4

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Jayla Allen, et al. vs. Waller County, Texas, et al.
Peniel Joseph Ph.D. - 12/16/2019

	CHANGES AND CORRECTIONS
1	WITNESS NAME: PENIEL JOSEPH, PH.D. - VOLUME 1
2	DATE: DECEMBER 16, 2019
3	Reason Codes: (1) to clarify the record; (2) to conform
4	to the facts; (3) to correct a transcription error; (4)
	other (please explain).
5	PAGE/LINE CHANGE REASON CODE
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25	_____

SIGNATURE

I, PENIEL JOSEPH, PH.D., have read the foregoing deposition and hereby affix my signature, that the same is true and correct, except as noted on the previous page.

 PENIEL JOSEPH, PH.D.

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared PENIEL JOSEPH, PH.D., known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

 NOTARY PUBLIC IN AND FOR

THE STATE OF _____

COMMISSION EXPIRES: _____